

REMARKS

The withdrawn claims have been retained so that they can be returned to active consideration when patentability has been recognized. Claim 1 has been amended by incorporating prior claim 4 therein. Also, a change for increased clarity has been made to, withdrawn claim 24.

Claims 1-7, 9-12, 14, 15, and 17-19 were rejected under 35 U.S.C. § 103 over Herslof in view of Tomaru and Klaschik. This rejection is respectfully traversed.

The Examiner previously correctly identified the Herslof composition as a solid. This is further confirmed by page 3, lines 16-17, which refers to it as a "solid ... tablet or suppository composition". A solid preparation such as a tablet is not, of course, injectable. Likewise, while a suppository may be insertable, it has a solid shell and is not injectable. Indeed, Herslof explicitly excludes from his composition oily lipids which could be administered orally (page 5), and this further teaches away from a non-solid form for any use, and particularly to treat constipation. Likewise, Table 3 in the present application shows an oily composition without polar lipid was not very good, and reinforces this teaching.

There is nothing in the reference which would suggest to a person skilled in the art to convert the solid composition of the reference to an injectable or an injectable which had desirable properties. The Examiner will note that the injectable composition of these rejected claims provides a constipation treating composition which is efficient, has a rapid onset of action, which does not irritate the mucus of the bowel, and is convenient to administer, as noted on page 2, lines 7-10 of the specification.

Herslof's composition is designed to be a carrier for drugs or a food supplement. The reference does not teach or suggest that it could be used to treat constipation in the absence of a drug.

Herslof's composition is a combination of polar and non-polar lipids, and the non-polar lipids can be triglyceride oils (page 6). Pending claims 11, 12 14, 15, and 17 exclude the presence of an oily triglyceride, and it will be appreciated that Herslof therefore teaches away from the composition of these claims.

Tomaru has been cited only for teaching that glycerol has been used for the treatment of constipation although it can induce giant migrating contractions. Since there is no reference to constipation in Herslof with a fluid, even in passing, there is no reason to combine Tomaru with Herslof. Further, as previously acknowledged in an Office Action, Tomaru does not teach the addition of an oily triglyceride or a polar lipid.

Klaschik has a general discussion about constipation and how it is treated. Since Herslof does not concern constipation with a liquid, there is no reason to consult Klaschik in the first instance. Even if it were consulted for some unknown reason, nothing in Klaschik suggests that the Herslof composition be somehow converted into an injectable.

Beyond the foregoing, Klaschik divides laxatives into several categories. One is rectal laxatives and includes suppositories, elysmas and enemas. But, there is no suggestion that all of these have the same composition. As to enemas, the composition contains fluid and may contain glycerol and olive oil. There is, however, no suggestion it contains any type of lipid.

The Examiner previously acknowledged that Klaschik does not teach the specific components of a preferred embodiment of the instantly claimed invention. Moreover, one of the problems with enemas is, as stated on application page 2, lines 2-3, their administration is problematic because of leakage. The composition of the present invention does not suffer from this drawback.

The most recent Office Action argues that it would be obvious to modify the amount of fluid to obtain constipation relief. In response, it is respectfully pointed out that there is no disclosure about treatment of constipation with a fluid in Herslof and therefore, and as a consequence, there is no reason to convert Herslof's solid into a fluid and then modify the amount of fluid.

The Office Action also argues that dissolving constipation is only an intended use. However, a composition and its properties cannot be divorced. MPEP 2112.01(II) ("A chemical composition and its properties are inseparable."). Accordingly, the fact that the claimed composition treats constipation is inherent, and it is not predictable the composition would have this property.

Claims 21-23 were rejected under 35 U.S.C. § 103 over Herslof in view of Klaschik and Stemmle.

Herslof and Klaschik have been discussed above and shown not to render the claimed invention obvious. Stemmle does not cure the basic deficiencies in this combination, and is not relevant to the claim feature for which it was cited. It relates to a guar tablet and contains no teaching or suggestion about constipation. It also does not teach or suggest an injectable composition. There is no reason to consult this reference.

Further, Stemmle uses dynamic viscosity only for making a comparison between various batches of tablets to check consistency. It does not teach that the composition, i.e., the tablet, itself has (or should have) any particular dynamic viscosity. It does not suggest a rectal injectable have any particular dynamic viscosity. Arguing that the combination of Herslof and Klaschik render an edema obvious, which they do not, cannot change this fact.

In light of the fact that all of the references cited do not teach or suggest an injectable composition and its use, it is readily apparent that those references, whether considered alone or in combination cannot negate the novelty and unobviousness of the instant claims. It is therefore respectfully submitted that none of these rejections should be repeated.

In view of the above amendment and remarks, applicant believes the pending application is in condition for allowance.

Dated: May 26, 2010

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